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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)**

In re E.L. et al., Persons Coming
Under the Juvenile Court Law.

C064226

SACRAMENTO COUNTY DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

(Super. Ct. Nos. JD226700,
JD226701 & JD226702)

Plaintiff and Respondent,

v.

M.L.,

Defendant and Appellant.

Father, incarcerated for forcible sex crimes and for that reason denied reunification services, contends the juvenile court improperly denied him in-prison visitation with his children (aged 7, 6 and 3), and improperly ordered that cards and letters from him to them had to be screened. We see no abuse of discretion and shall affirm the juvenile court's orders.

FACTUAL AND PROCEDURAL BACKGROUND

On August 5, 2009, in a prior appeal, we reversed exit orders made when the juvenile court sustained supplemental petitions alleging father had engaged in sex crimes, and then terminated dependency. We concluded that the record in that appeal failed to contain substantial evidence that father had committed any sex crimes. (*In re E.L.* (Aug. 5, 2009, C060642) [nonpub. opn.] .)

Coincidentally, on August 5, 2009, a jury convicted father of forcible sex crimes. Although the details of the criminal case are not fully revealed in this record, this record shows father was convicted of forcible sexual penetration by a foreign object and forcible oral copulation. (Former Pen. Code, §§ 288a, subd. (c)(2), 289, subd. (a)(1).)¹

On September 15, 2009, the Sacramento County Department of Health and Human Services (the Department) filed new petitions, alleging dependency jurisdiction over the minors, then aged 3, 5, and 7, based on the mother's history of leaving the children unattended, including to attend father's sentencing hearing. (Welf. & Inst. Code, § 300, subd. (b).)²

¹ Although not explicitly stated in the dependency record, the parties were evidently aware of further details of the convictions. Father's criminal appeal is pending in this court, but to preserve the confidentiality of the minors, we omit the case number. For completeness, we note father was sentenced to 10 years in state prison.

² Undesignated statutory references are to the Welfare and Institutions Code.

On December 21, 2009, the juvenile court sustained jurisdiction over the minors.

An addendum report stated the mother had completed required parenting classes, and recommended that the minors be placed with her, under dependent supervision.

The report recommended that reunification services to father would be detrimental to the minors, because of his incarceration. However, the report recommended visitation between father and the minors.

At the dispositional hearing on February 4, 2010, the court denied reunification services to father, and that order is not challenged on appeal.

At that hearing, counsel for the minors objected to visitation with father. Mother's counsel initially submitted on that issue, stating "I think that leaving the idea of card and letter contact may be appropriate," but after consulting with the mother, her counsel stated "She certainly doesn't want face-to-face contact."

Father's counsel objected to the lack of contact, stating contact would not be detrimental to the minors.

The juvenile court stated the minors would be returned to the mother under dependent supervision and "I will also be making an order for father to have card and letter contact only at this point, and that should be with the cards and letters being sent through the Department. So I want the social worker

to see it before it goes to the kids to make sure there's no inappropriate content."

When father's counsel asked for an explanation, the juvenile court referee stated: "I, at this point, don't want a seven-, six- and three-year-old [child] to be transported to state prison to visit their father until that's been more thoroughly assessed. I believe that would be detrimental [¶] I understand that father loves his children and wants to see them, but I don't believe it would be appropriate for them to be having to go visit their father--how long is he going to be in prison? A long time, as I recall."

The referee also stated: "I seriously doubt he would be sexually inappropriate while in prison. The visits would be supervised by prison personnel. I just do not believe it's appropriate for the children to go to a prison to visit their father at their ages, three, six, and seven.

"[FATHER'S COUNSEL]: Your Honor, do you think the content of the cards and letters could be sexually inappropriate?

"THE COURT: I would hope not. That's why I'm just having them run through the social worker. I doubt there would be any need to do any editing at all, but they need to take a look at it first, and it may be they decide to relax that. And all of this can be relaxed at some point in the future. It's just going to require a [section] 388 [petition] to come back and change that."

The juvenile court referee formally adjudged the minors dependents, gave them into their mother's care with family maintenance services, and ordered no reunification services to father, stating:

"With regard to father, his visits will be limited to card and letter contact. Those communications will be sent to the children through the . . . Department so that they can be viewed before they're passed on to the children to make sure the content is appropriate.

"And I'm not suggesting that I'm expecting any inappropriate contact, but I just want to make sure, and if the Department assesses at some point in the future that it's appropriate for the children to be able to go have face-to-face visits with father while he's incarcerated, then a [section] 388 [petition] can be filed to make that request. And [father's counsel] can request that at some point."

Father timely filed this appeal.

DISCUSSION

Before addressing father's substantive contentions, we address a couple of procedural points he raises.

First, although the Department had recommended contact visits, the Department did not, contrary to an implication by father, take any position regarding screening cards and letters. Second, we reject father's claim that the Department cannot defend the juvenile court orders, because that would be a change

of its trial theory. The Department acts in the best interests of the minors, and we see nothing inequitable about it defending the judgment, as the respondent, although it had recommended visitation.

In attacking the no-contact order, father cites several cases that do *not* involve violent inmates, where a statutory presumption of reunification services, and visitation, operates. (See *In re Dylan T.* (1998) 65 Cal.App.4th 765, 770-775; *In re Precious J.* (1996) 42 Cal.App.4th 1463, 1475-1480; *In re Brittany S.* (1993) 17 Cal.App.4th 1399, 1406-1407.)

However, as the Department points out, section 361.5, subdivision (f), applicable to this case, provides that *where reunification services have been denied*, e.g., due to a violent felony, "The court may continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child."

As father elsewhere concedes, this means the no-contact order fell within the juvenile court's broad discretion. (*In re J.N.* (2006) 138 Cal.App.4th 450, 457-460.) Although father quibbles about the wording of the juvenile court's order, the referee clearly stated, "I, at this point, don't want a seven-, six- and three-year-old [child] to be transported to state prison to visit their father until that's been more thoroughly assessed. I believe that would be detrimental"

Based on the ages of the minors, and father's incarceration for forcible sex crimes, we cannot say the juvenile court abused

its discretion in finding it would be detrimental to allow visitation at this time. As the court noted, once father's prison status is evaluated, the Department or father's counsel could petition for modification of the order to allow visitation, assuming the location and nature of his confinement would make such visitation appropriate.

As for the order that cards and letters would be screened, this is no different in effect than supervised visitation, where a neutral party monitors the parent-child interactions and is prepared to intervene in the case of inappropriate behavior. Father was convicted of forcible sex crimes and may be housed with like inmates. The juvenile court acted well within its discretion by ensuring that no untoward letters or cards would be sent to the minors. Again, either when the minors mature, or when father's prison status is evaluated, this order, too, is subject to modification in the minors' best interests.

DISPOSITION

The judgment, embracing the no-contact and monitored communication orders, is affirmed.

_____, BUTZ, J.

We concur:

_____, HULL, Acting P. J.

_____, CANTIL-SAKAUYE, J.